

Paper No.

Filed on behalf of: Human Genome Sciences, Inc.

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UNITED STATES PATENT AND TRADEMARK OFFICE
BOARD OF PATENT APPEALS AND INTERFERENCES

Patent Interference No. 105,613 (RT)

AMGEN, INC.
(09/895,943),
Junior Party,

v.

HUMAN GENOME SCIENCES, INC.
and Schering Corp.
(6,844,170),
Senior Party.

CITATION OF REFERENCES

1 Pursuant to Paper 71, and out of an abundance of caution, HGS submits references¹ cited
2 during the prosecution of European Application No. 99912330.0 ("European Application"). The
3 European Application claims the benefit of U.S. Provisional Nos. 60/078,563 and 60/086,505,
4 which are priority applications for the HGS patent-in-interference.
5

6 The Technical Board of Appeals of the European Patent Office issued a written decision
7 on January 29, 2009 (based on a December 2008 oral hearing) for the European Application
8 ("the European Decision"). The European Decision identified "T. Takeshita et al., Science,
9 1992, Vol. 257, pages 379 to 382" as the closest prior art for CRCGCL. HGS submits Takeshita
10 et al. as Exhibit 1109.
11

12 The European Decision cites Bazan, Proc. Natl. Acad. Sci. USA, 1990, for disclosing the
13 cytokine receptor family and the motifs shared by its members. HGS submits Bazan as Exhibit
14 1110.
15

16 Out of a further abundance of caution, HGS submits:

- 17 • as Exhibit 1111, the Supplementary European Search Report for the
18 European Application (the Supplementary European Search Report did not
19 include either of the above-identified references);
20
- 21 • as Exhibit 1112, a table listing the references cited in the Supplementary
22 European Search Report with the references as attachments (excluding
23 Cook P.R. et al., EMBL Database Accession No. X91553, which is a cited
24 reference on the face of the HGS patent-in-interference); and
25

26 ¹ Pursuant to the Patent Office's disclosure policies, HGS submits these references without
27 making any admissions concerning the relevance of these references. 37 C.F.R. § 1.97(h).
28

- as Exhibit 1113, the International Search Report for PCT/US99/05068 that preceded the Supplementary European Search Report. (The references cited in the International Search Report are cited on the face of the HGS patent-in-interference.)

HGS has two pending U.S. applications that claim the benefit of the HGS patent-in-interference (Serial Nos. 10/899,107 and 12/358,097). In Serial No. 10/899,107,² certain references were cited that: (i) appear to have effective reference dates prior to March 5, 1999;³ (ii) were not cited on the face of the HGS patent-in-interference; and (iii) are not contained in the exhibits cited above. A list of these references is submitted as Exhibit 1114. The listed references include references concerning the murine TSLP ligand that have already been submitted in this interference as Amgen Exhibits 2013 and 2027.

If the Board would like HGS to submit any of the references in Exhibit 1114, HGS would readily do so. HGS is serving a copy of these references on counsel for Amgen. (HGS is not currently authorized to submit references that are not part of the European prosecution and even with an abundance of caution additional authorization appears unnecessary given the current and prior submissions in this interference.) The Patent Office's copy of the filewrapper in Serial No. 10/899,107 should also contain all of the references in Exhibit 1114.

HGS also submits an updated Exhibit List, HGS Exhibit List 7. In addition, pursuant to SO ¶¶ 10.4 and 154.3.2, HGS is filing via Federal Express four accordion folders containing this notice, HGS Exhibit List 7, and the cited exhibits. Because of the size of the exhibits, electronic copies of the exhibits are being filed by submitting to the Board via Federal Express a CD

² Serial No. 12/358,097 is a divisional of 10/899,107 that was filed in January 2009.

³ HGS has priority applications, but uses March 5, 1999 – the filing date of the application that issued as the HGS patent-in-interference – for this purpose.

1 containing Exhibits 1109-1114. (HGS's counsel cleared this Fed Ex submission with the
2 Board's staff.)
3

4 Respectfully submitted,

5
6 Dated: March 5, 2009

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the NOTICE OF REFERENCES and HGS Exhibit List 7 is being served by email and a copy of the CD-ROM containing Exhibits 1109 – 1114 and a CD-ROM containing: (i) the references cited in Exhibit 1114, (ii) the prosecution history of European Application No. 99912330.0 as downloaded from EPO Online, and (iii) the prosecution history of Serial No. 10/899,107 as downloaded from Public PAIR are being served by Federal Express upon the following today:

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Despertt, Sonja

From: Torczon, Richard
Sent: Thursday, March 05, 2009 5:01 PM
To: Despertt, Sonja
Subject: FW: Interference No. 105,613 (RT) paper 72

Attachments: CITATION OF REFERENCES.PDF



CITATION OF
REFERENCES.PDF (29)

Please have a copy of this entered in the file for the patent.

-----Original Message-----

From: Scott, James
Sent: Thursday, 5 March 2009 16.03
To: Torczon, Richard
Subject: FW: Interference No. 105,613 (RT) paper 72

-----Original Message-----

From: Rizkalla, Hany [mailto:HRizkalla@kenyon.com]
Sent: Thursday, March 05, 2009 3:31 PM
To: BOX INTERFERENCES
Cc: azupcic@fchs.com; rfischer@fchs.com; DeLucia, Richard; Kenny, John
Subject: Interference No. 105,613 (RT)

CITATION OF REFERENCES